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VIA ECF AND ELECTRONIC MAIL

Honorable Stuart M. Bernstein
United States Bankruptcy Court
Southern District of New York
One Bowling Green, Room 723
New York, New York 10004-1408
Bernstein.chambers@nysb.uscourts.gov

Re: Adv. Pro. No. 10-04417 (SMB); *Irving H. Picard v. The Lustig Family 1990 Trust, et al.*

Adv. Pro. No. 10-04554 (SMB); *Irving H. Picard v. David Ivan Lustig*

Dear Judge Bernstein:

We are counsel to Irving H. Picard, as trustee (“Trustee”) for the substantively consolidated SIPA liquidation of Bernard L. Madoff Investment Securities LLC (“BLMIS”) under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa, *et seq.* and the estate of Bernard L. Madoff. We write to request entry of the attached Case Management Notices (the “Notices”).

On May 17, we proposed Notices to defense counsel substantially in the form ordered under the Order (1) Establishing Litigation Case Management Procedures for Avoidance Actions and (2) Amending the February 16, 2010 Protective Order. (Adv. Pro. No. 08-01789, Dkt. 3141, Ex. A, ¶ 2.G., and Ex. 2). Defendants have refused to agree to entry of the Notices.

The Avoidance Action Procedures Order mandates that “[p]rior to the close of discovery, no motions may be made without the Court’s prior approval” (Adv. Pro. No. 08-01789, Dkt. 3141, Ex. A, ¶ 6.A.). Nevertheless, despite repeated attempts, defense counsel will not agree to any notices under which discovery would proceed in a logical manner. Instead, defense counsel has indicated that he intends to file a pre-discovery motion for summary judgment and request that all discovery be stayed. The

Honorable Stuart M. Bernstein
June 22, 2016
Page 2

Trustee submits that such a motion would be premature and improper because the Trustee is entitled to take discovery relating to, among other things, deposits into and withdrawals from each account at issue, as well as Defendants' purported affirmative defenses.

The Trustee respectfully requests that the Court enter the Notices attached as Exhibit A so that discovery can be conducted expeditiously in a logical progression.

Respectfully submitted,

/s/ Nicholas J. Cremona
Nicholas J. Cremona

Enclosures

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